Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	CG Docket No. 02-278
)	
Rules and Regulations Implementing)	
4h - Talamban - Cananan Danta - 4i - 1)	
the Telephone Consumer Protection)	
Act of 1991)	

OPPOSITION TO PETITION FOR STAY OF THE AMERICAN BUSINESS MEDIA

I respectfully submit this reply to the American Business Media's (ABM") Petition for Stay in regard to the Commission's new requirements and the Commission's reversal on the Existing Business Relationship ("EBR") dealing with facsimile advertisements. [In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, FCC Rcd., 03-153 (F.C.C. Jul 03, 2003), 68 FR 44144-01.]

In the June 26th adoption of the Commission Report and Order the Commission reversed its earlier opinions that a prior EBR constitutes prior express consent to receive facsimile advertisements. Such a reversal is appropriate given the plain language of the statute, the intent of Congress and the unanimous decisions handed down by the courts that have addressed this issue¹.

I work for a federal contractor at a federal facility and see many unsolicited facsimile advertisements. This year alone over 400 unsolicited facsimile advertisements were received on the fourteen (14) facsimile machines that I have access to. Included in those facsimiles are advertisements for subscription renewals². Apparently this is occurring at federal facilities all over the country. Such facsimiles are not only a violation of the TCPA they are also trespass upon, conversion of and theft of government property.

The engineers I work with provide their facsimile numbers when submitting RFP's (Request for Proposal) on their projects. Permission to transmit unsolicited facsimile advertisements is never given – that is not only company policy it is also federal law that prohibits the use of federal property for advertising purposes.

¹ See comments of Kondos & Kondos Law Offices, John Holcomb Esq. and Robert Biggerstaff

² See attached – the Commission may note that only 1 out of the 15 unsolicited facsimile advertisements contain the required header information. Additionally 1 recipient claims to have never subscribed to the magazine or provided his fax number for a subscription..

ABM's petition incorrectly claims that their facsimile advertisements to renew subscriptions are protected news media items. A news article and a facsimile advertisement to renew a magazine subscription are two entirely different things. The latter is a commercial advertisement as defined by the TCPA.

ABM's petition also incorrectly claims that the recipients of the unsolicited facsimile advertisements will suffer no harm. Of the 15 facsimiles received most were addressed to individuals that have never used that fax number. Some of the individuals have never even been employed by my company. The facsimile numbers were never provided to anyone as it is against company policy to provide company facsimile numbers for other than a business purpose. How they were obtained is therefore questionable.

In that light it is only prudent that everyone obtain permission by signature and telephone number prior to transmitting a facsimile advertisement. Asking for permission during an initial contact with someone does not take that much more time or any extra record keeping. ABM and their members should **and already are**³ doing so.

In conclusion, there is no exemption in the TCPA for the news media in regard to the transmission of facsimile advertisement. It is not labor intensive or burdensome to obtain the signature authorization and telephone number prior to transmitting an unsolicited facsimile advertisement. It is not only the proper thing to do but it will also help those entities engaged in legitimate business activities from violating the TCPA. A stay as requested by ABM will harm the general public. As such the Commission has made the proper determination in its ruling adopted June 26th, 2003.and I respectfully request that ABM's request for a stay be denied.

Respectfully	submitted,

<u>/s/</u>

Joe Shields
Texas Government & Public Relations Spokesperson for Private Citizen Inc.
16822 Stardale Lane
Friendswood, Texas 77546

³ The Commission may note that most of the attached facsimile advertisements for subscription renewal capture a signature and permission.

1465949 R1003B	
Deliver Immediately to Addressee	NetworkWorld RENEWAL NOTICE
CHI MANAGER	
PO BOX 58 HOUSTON, TX 77	Urgent! Please complete this renewal form and fax it back immediately. Failure to renew NOW could result in subscription termination. Please fax completed form to
Yes, I want to continue to receive my FREE subscription to Network World, the leading industry resource for network IT executive No, thank you.	947-201-4916
Your Signature Today's Date R16	0038
1 What is the principal business activity at your location? (check ONE only)	Please indicate the Web/Security/LAM/Internetworking/Wireless/Mobile/WAN Equipment/Carrier Services that you are currently involved in purchasing or plan to purchase. (check ALL that apply)
1. Manufacturing (withwr) 12. Education 13. Carriers/Noice/Data/ISP 13. Carriers/Noice/Data/ISP 13. Carriers/Noice/Data/ISP 14. Web Hosting/HSP 15. ASP/SSP/MSP 15. ASP/SSP/MSP 15. ASP/SSP/MSP 15. ASP/SSP/MSP 16. Manufacturing (computer/Communications/Oscillativy/Entertainment/Recreation 16. Manufacturing (computer/Communications/Oscillativy/Entertainment/Recreation 17. Resellers/MRS/MDs/Integrators 18. Other (phone specify) 18. Other (phone specify)	105. Web Collaboration/Groupware
P: What is your primary job function? [check <u>ONE</u> only] A: What additional job functions are you involved in? [check <u>ALL</u> that apply] P. 1. Network Management D: 1. Network Management D: 1. Network Management D: 1. Network Management Applications Management Applications Management T: Corporate Management D: Applications Management T: Corporate Management [cso. cc] Corporate Management [cso. cc] Corporate Management [cso. cc] D: Network Management [cso. cc] D: One (shows specify)	10. Frewais OUS loss 11. Anti-Virus Software 48. Optical Networks/Switches 12. Public Key Encryption (PKN) 49. Voica/Video over IP Gateways 13. DES Encryption Tools 50. Modems/Cable Modems 14. Authentication Tools 51. xDSL Products 15. Intrusion Detaction 52. Diagnostic Test Equipment 16. Biometrics 53. DSUs/CSUs
What is the estimated value of network equipment and services that you specify, recommend, or approve the purchase of for this location and for all other locations? A. THIS LOCATION Please print the appropriate number code on the line next to each product category. Please complete ALL categories A 1. \$100 Million or More A. B. Large Systems greated recommendation of the internet/Extranet 2. \$50 Million to \$99.9 Million B. Desktops proceedings for the internet/Extranet 3. \$25 Million to \$49.9 Million C. Mobile producing process will be served to the property of the internet/Workshop of the internet/Workshop of the internet/Extranet 5. \$1 Million to \$9.9 Million D. Servers L. Remote Access 5. \$1 Million to \$9.9 Million E. LANS M. Peripherals producing the internet/Workshop of the above H. Internet/Workshop of the above H. Internet/Workshop our have purchase influence? [check ONE only]	Part Part
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10 Please indicate the platforms that are currently installed/planned. [check ALL that apply]	A. CURRENTLY INVOLVED IN PURCHASING B. PLAN TO PURCHASE
A. CURRENTLY INSTALLED NETWORK PROTOCOLS A B	01. Laptops 22. E-Mail/Unified Messaging 23. Groupware

ID:00292535 01/08/2003 03:39PM p.2 (25,42)

1465949 R1003B

Deliver Immediately to Addressee

CHUCK SWENSON, PROGRAM MANAGER LOCKHEED MARTIN PO BOX 58980 MS L1C HOUSTON, TX 77258

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1. Europe 2. Asia	3. ☐ South America 4. ☐ Australia	5. Middle East 6. Africa	7. Canada 8. None
	2		Form:

or renew online at renew.nww.com/er1003b

Submit your renewal now to avoid subscription cancellation.

Deliver Immediately to Addressee	NetworkWorld RENEWAL NOTICE
CH .	You're OVERDUE to renew! Renew NOW with this short and easy form-
HOUSTON, TX 77:	or risk immediate subscription termination.
	FAX your completed renewal to:
Ves, I want to continue to receive my FREE subscription to Network World, the leading industry resource for network IT executives.	847-291-4816
□ No, thank you.	or renew online at renew.nww.com/er1303a
Your Signature Today's Date R1303A	
1 What is the principal business activity at your location? (check ONE only)	Please indicate the Web/Security/LAN/Internetworking/Wireless/Mobile/WAN Equipment/Carrier Services that you are currently involved in purchasing or plan to purchase. (check ALL that apoly)
Manufacturing technol 12.	105. Web Acceleration/Caching/Load Balancing 44. Mobile Data Equipment/ Services 07. Web Acceleration/Caching/Load Balancing 44. Mobile Data Equipment/ Services 08. Portal/Intranet Wan Equipment 45. Other Remote/Wireless Wan Equipment 46. Frame Relay Equipment 46. Prame Relay Equipment
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What is the estimated value of network equipment and services that you specify, recommend, or approve the purchase of for this location and for all other locations? A. THIS LOCATION B. ALL OTHER LOCATIONS	21 Fast Ethernet CARRIER SERVICES 22 Gigabil Ethernet 23 Layer 3 / Switches 24 ATM Switches 24 ATM Switches 25 Private Lines
Please print the appropriate number code on the line next to each product category. Please complete ALL categories A-Py 1. \$100 Million or More 2. \$50 Million to \$99.9 Million 3. \$25 Million to \$49.9 Million 6. Desktops provide product and product category. Please complete ALL categories A-Py 1. \$100 Million to \$49.9 Million 7. \$24.9 Million 8. Desktops provide product and	25. Houters 62. Frame Helay Services 62. Network Attached Storage (MAS) 63. ADSLUDSL 64. T-1/T-3 Services 64. T-1/T-3 Serv
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17. Wireless LANs 37. Windows CE 18. Infiniband 38. Other Operating System 19. DSL 20. ISDN None of the above (1-38) 39.	20. SLA Management None of the above (1-37) 38. Form: 0003

NWF#: 1465949

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		104 D DSP's	123 1 1 127 - x Cable
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1 🗆 Executive Management		108 Memory ICs	125 Batteries
2 Section/Project Management		109 Microprocessors/	123 La Botteries
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5 🔲 Technical Services		111 Power Semiconductors	STDbus, PC/104, etc.)
6 🔲 R&D Management		THE TOWER SERVICE REGISTER	127 Software (IC Design, PCB
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and servers	39 Electronic instruments, ATE, test &	(Check ONE only)	
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24 Other Computer Systems	Automotive and Avionics		
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(including Broadband)	Other	76 □ None of the abo	
31 RF & Microwave Systems	46 Contract Manufacturers	/o L. None of the abo	DAC.

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201 D EE Product News

202

Electronic Products

204 None of the above

laboratories

50 🗆 Other (please describe)

47
Other manufacturers incorporating

49 Technical/Engineering Consulting

electronic equipment

in their end product
48 🗆 Independent/academic R&D





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R1503B

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2. What is your primary JOB FU	NCTION? ert one number from below here:
Please Check all Job functions below: O 2 Process Engineering / Manufacturing Engineering / Production Engineering O 7 Corporate Management O 6 Technical Engineering Staff (including Field Engineering / Technician) O 1 Circult Design, Circult / System Packaging Design, other Design (including management)	□ 04 Research & Development (Including management) □ 03 Quality Control/ Quality Assurance/ Production Testing (Including management) 98 □ Other (please specify)
3. In the performance of my job, I E INFLUENCE the PURCHASE o	f the following PRODUCTS
A. ASSEMBLY EQUIPMENT/ MATERIALS/SERVICE 17 Pick and Place Equipment 28 Screen Printing Equipment & Accessories 33 Retiow Equipment and Software 01 Adhesive/Coatling/Encapsulating Materials 18 Production Materials and Equipment 19 Soldering Materials 34 Assembly Line Tools and Furniture 05 Cleaning Materials and Equipment 35 Design Services 36 Broad Fabrication Services 37 Assembly Services 38 Test Services 13 Repair/Rework/Desoldering Equipment 20 Solder mask Material and Equipment 21 Substrates/Laminates 06 Component Preparation/Insertion Equipment 39 Hand Tools 40 Clean Room Material and Equipment 25 Automatic Soldering Systems 26 Printed Circuit Boards 27 Materials Handling/Conveying Equipment 29 Insert Gases 14 Robotics	B. INSPECTION EQUIPMENT 41 Laser, Vision, X-Ray 31 Optical Microscopes 10 Imaging Equipment C. TEST EQUIPMENT 42 Test Fixtures/Probes 22 Automated Test Equipment 08 Environmental/Burn-in Testers 23 Bare Board Testers 24 In Circuit Testers D. ANTISTATIC EQUIPMENT & MATERIALS 43 Chemicals 44 Flooring 45 Ionizers 46 Shipping/Storage Materials 47 Wrist/Foot Straps E. COMPONENTS 64 Active Components 65 Passive Components 66 Optoelectronic, Components 67 Electromechanical Components None of the above (A through E) 99
☐ 30 Gas Handling, Monitoring, Control	RF35

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Fax: 2818

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